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April 5, 2023

Via ECF

Hon. Lorna G. Schofield, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Lenny Javier v. New York City Transit Authority, et al.*
Civ. No.: 22-cv-11010 (LGS)(RWL)

Dear Judge Schofield:

We represent defendants New York City Transit Authority (NYCTA), Metropolitan Transportation Authority (MTA), and Hopeton Kiffin (Kiffin) in the above-referenced matter and we are submitting this letter to request a pre-motion conference in anticipation of filing a motion to leave to commence a third-party action pursuant to FRCP Rule 14(a).

This is a personal injury diversity action arising out of an October 4, 2021 incident in which plaintiff, Lenny Javier, was pushed into the side of an oncoming subway train at the 42nd Street station by non-party Anthonia Egegbara.

Defendants seek to commence a third-party action against Anthonia Egegbara for indemnification and contribution. Plaintiff's complaint does not contain any allegations against Anthonia Egegbara. However, it is clear that but for her (alleged)¹ criminal actions, the incident would not have occurred. As such, Defendants have a good faith basis to institute a third-party action against her (*see Bank of India v Trendi Sportswear, Inc.*, 239 F.3d 428, 437 [2d Cir. 2000], *citing* Fed. R. Civ. P. 14 ["Rule 14(a) permits a defending party to implead another 'who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff'"]).

¹ Anthonia Egegbara was arrested following the incident and charged with the attempted murder of Plaintiff.

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Defendants, in the initial joint status letter, advised the Court of the potential difficulties in obtaining service on the third-party and with obtaining any meaningful discovery due to the fact that public criminal court records reveal that she is currently receiving psychiatric treatment. However, in light of the Court's recent discovery order, Defendants are compelled to join her in the action at this time.

There is no prejudice to the Plaintiff in granting the motion, as there has been limited discovery and depositions have not commenced.

Accordingly, Defendants seek a premotion conference the week of April 17 or at any mutually convenient date thereafter to discuss their anticipated motion.

Respectfully submitted,

Andrew P. Keaveney

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cc: Roth & Roth, LLP (via ECF)
Sonin & Genis (via ECF)